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Attorney for Proposed Designee
Christopher Kamon

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In Re GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**PROPOSED DESIGNEE'S SUR-
REPLY TO TRUSTEE'S REPLY
TO OPPOSITION TO MOTION TO
DESIGNATE CHRISTOPHER
KAMON TO APPEAR OR ACT ON
BEHALF OF THE DEBTOR AND
COMPEL ATTENDANCE AT THE
§ 341(a) MEETING OF
CREDITORS PURSUANT TO
FEDERAL RULE OF
BANKRUPTCY PROCEDURE
9001(5)**

1 Christopher Kamon, by and through his attorney of record, Richard M.
2 Steingard, hereby submits this *Sur-Reply to Trustee's Reply to Opposition to*
3 *Motion to Designate Chris Kamon to Appear or Act on Behalf of the Debtor and*
4 *Compel Attendance at the § 341(a) Meeting of Creditors Pursuant to Federal of*
5 *Bankruptcy Procedure 9001(5).*

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8 DATED: April 29, 2021

Respectfully submitted,

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10 LAW OFFICES OF RICHARD M. STEINGARD

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12 /s/

13 RICHARD M. STEINGARD
14 Attorney for Prospective Designee
CHRISTOPHER KAMON
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 On April 27, 2021, the Chapter 7 Trustee (“Trustee”) filed a Reply to
5 Christopher Kamon’s Opposition to his designation as a substitute debtor. The
6 Trustee makes three points: (1) Mr. Kamon concedes that he is an appropriate
7 designee; (2) the designation of Mr. Kamon is not futile, even though he will assert
8 his Fifth Amendment privilege and decline to make a statement or answer
9 questions, because an adverse inference against a debtor can be drawn from an
10 assertion of the privilege; and (3) the appointment is not futile because Mr. Kamon
11 can then be compelled to produce all corporate documents in his possession. All
12 three arguments are wrong or without legal support. We briefly address each
13 below.

14 **II.**

15 **ARGUMENT**

16 **A. Mr. Kamon Does Not Concede He is an Appropriate Designee**

17 The Trustee first claims that Mr. Kamon conceded that he is an appropriate
18 designee. (ECF 320 at 3.) Mr. Kamon made no such concession. Mr. Kamon’s
19 Opposition brief responded to the Trustee’s claim that Mr. Kamon was the CFO of
20 the debtor, Girardi Keese, by stating, “Accepting these arguments as true...” (ECF
21 290 at 4.) As the Trustee well knows, this is not a concession but a linguistic
22 manner of addressing an argument advanced by the opposing side. To put this
23 issue to rest, Mr. Kamon does not concede any fact or argument advanced by the
24 Trustee.

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1 **B. The Trustee’s Claim that Mr. Kamon’s Assertion of the Fifth**
2 **Amendment is a Basis to Draw Advance an Adverse Inference**
3 **Against the Debtor is Without Legal Sport**

4 As one of two bases for requesting that the Court designate Mr. Kamon, the
5 Trustee asserts that if Mr. Kamon is so designated and asserts his Fifth
6 Amendment privilege, the Trustee can draw an adverse inference against the
7 debtor. (ECF 320 at 2-4.) Here, the Trustee confuses Mr. Kamon—*a non-party*
8 *and not the debtor*—to the debtor—a *party*. There is an obvious difference
9 between the two, and the cases cited by the Trustee—*Baxter* and *Seror*—only
10 apply to “a party” or the “debtor” in an action. *Baxter v. Palmigiano*, 425 U.S.
11 308, 318 *Seror v. Lopez (In re Diana Lopez)*, 532 B.R. 140, 159 (Bankr. C.D. Cal.
12 2015). Counsel is unaware of any case—and the Trustee has cited none—in which
13 a court found that a *non-party*’s assertion of his or her Fifth Amendment rights was
14 a basis to draw an adverse inference against a *party*, or that the assertion of the
15 Fifth Amendment by a *substitute designee* for a debtor is a basis for drawing an
16 adverse inference against *the debtor*. Absent such a holding, the Trustee’s first
17 justification in favor of the designation fails.

18 **C. The Trustee’s Claim that Mr. Kamon’s Designation Will Permit the**
19 **Trustee to Compel Production of Records is False**

20 As the second of two bases justifying the request for Mr. Kamon’s
21 designation, the Trustee claims that Mr. Kamon can then be compelled to produce
22 any debtor’s records in his possession. (ECF 320 at 4.) This too is legally baseless.

23 While an individual does not have Fifth Amendment right over certain
24 documents, Mr. Kamon retains a Fifth Amendment right over the physical act of
25 *producing* any such documents. *United States v. Doe*, 465 U.S. 605, 616 (1984)
26 (“The act of producing the documents at issue in this case is privileged and cannot
27 be compelled without a statutory grant of use immunity pursuant to 18 U.S.C. §§
28 6002 and 6003.”). This is commonly referred to as “*Doe* immunity” and is
accomplished by the U.S. Attorney requesting, and a court’s granting, immunity

1 for the act of producing any records. *See e.g., Matter of Grand Jury Proceedings*,
2 68 F.3d 193, 194 (7th Cir. 1995). In the absence of *Doe* immunity being conferred,
3 Mr. Kamon retains his Fifth Amendment rights.

4 Additionally, the Trustee’s position is based solely on FRBP 9001(5), which
5 states, in relevant part, that “[w]hen any act is required by these rules to be
6 performed by a debtor...if the debtor is a partnership, ‘debtor’ includes...if
7 designated by the court, any other person in control.” (ECF 320 at 4.) As the
8 statute explicitly states, this provision only applies to “partnerships.” FRBP
9 9001(5)(B). The Trustee has made no showing that the debtor was a partnership
10 and two recently filed documents indicate that the debtor was actually a sole
11 proprietorship.

12 On March 27, 2021, Jason Rund, the Chapter 7 Trustee in Mr. Girardi’s
13 personal bankruptcy matter, filed a Schedule of Assets and Liabilities for Mr.
14 Girardi in which he stated that Mr. Girardi was the 100 % sole owner of the Girardi
15 Keese law firm. (*In Re Thomas Girardi*, Case No. 20-BK-21020, ECF 139 at 7.)
16 More recently, on April 27, 2021, in the related case of *Welly Chandra v. Boeing*
17 *International Sales Corporation*, Case No. 18-CV-07686-TMD, currently pending in the
18 Northern District of Illinois, David Lira, a so-called “partner” at Girardi Keese, stated
19 that Girardi Keese was not a partnership but a sole proprietorship. (ECF 1060 at 7-8.)

20 These pleadings place at issue the legal status of the debtor; needless to say, if the
21 debtor is found not to be a partnership, Rule 9001(5)—upon which the Trustee solely
22 relies for the designation—is inapplicable.

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1 **III.**

2 **CONCLUSION**

3 The Trustee has cited two grounds for claiming that the designation of Mr.
4 Kamon is justified and would not be an act of futility. Neither has support in the
5 facts or law.

6 In light of Mr. Kamon's stated intention to assert his Fifth Amendment
7 rights, which the Trustee does not challenge, and because the Trustee has not
8 provided a credible reason to still have Mr. Kamon designated a substitute debtor,
9 we respectfully ask that the Court deny the Trustee's motion.

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11 DATED: April 29, 2021

Respectfully submitted,

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13 LAW OFFICES OF RICHARD M. STEINGARD

14
15 /s/

16 RICHARD M. STEINGARD
17 Attorney for Proposed Designee
18 CHRISTOPHER KAMON
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